estate, as the continuation of the *persona* of the assured, has the required interest seems not entirely satisfactory. Plainly, however, it is desirable that a man should be allowed to provide for his family in this way, and the courts have not hesitated to uphold such policies.[18]

WHO MAY EXECUTE A TRUST UPON DEATH OF THE TRUSTEE. — At common law the administrator of a trustee, *simpliciter*, has no right to perform the trust.[1] And when property is vested in A "and his heirs" upon a special trust, neither a devisee[2] nor an assignee *inter vivos*[3] is competent to execute it. If, however, property is vested in A, "his heirs and assigns," upon a special trust, the trust may be executed by a devisee of A, considered as a testamentary assignee,[4] but not by an assignee *inter vivos*.[5] The fact that in determining the power of a trustee the intent of the settlor is absolutely controlling is well brought out in a recent decision holding that as the discretionary power of a trustee to apply the principal of a trust fund for the benefit of the cestui is a matter of personal confidence, it cannot be exercised by a trustee appointed by the court upon the death of the original trustee. *Whitaker* v. *McDowell*, 72 Atl. 938 (Conn.). And it has also recently been held that the heir of the last survivor of several trustees to sell land cannot execute the trust or power of sale, because not pointed out in the instrument as one within the contemplation of the settlor.[6] An opposite conclusion reached upon almost identical facts may be distinguished upon the ground that the court apparently considered it to have been within the contemplation of the testator that the heir of the surviving trustee should act.[7] In all these cases, however, it must be understood that though the person in question is not indicated in the instrument as one to succeed to the trust, yet once having the legal title he must always hold the property subject to the trust.[8]

A distinction is taken by the courts between cases of trusts to which powers are annexed and cases of mixed trusts and powers. Thus where a deceased trustee had a *duty* to provide for the testatrix's daughter by using a discretionary power, it could be exercised by the trustee appointed by the court as his successor; for the testator had merely outlined the trust in expectation that the details would be arranged according to the judgment of his trustees.[9] In such a case of mixed trust and power, the power is imperative, and must be exercised; only the mode of its exercise is discretionary.[9] But where the power is simply annexed to the trust, the trust is

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[18] Campbell *v.* New England Insurance Co., 98 Mass. 381; Judson *v.* Walker, 155 Mo. 166.

[1] Mortimer *v.* Ireland, 11 Jur. 721.
[2] *In re* Morton & Hallett, 15 Ch. D. 143. But see Osborne *v.* Rowlett, 13 Ch. D. 774.
[3] Bradford *v.* Belfield, 2 Sim. 264.
[4] Titley *v.* Wolstenholme, 7 Beav. 425.
[5] Whittelsey *v.* Hughes, 39 Mo. 13.
[6] *Re* Crunden & Meux's Contract, 100 L. T. R. 472 (Ch. Div., May, 1909).
[7] *In re* Pixton & Tony's Contract (1897), 46 W. R. 187.
[8] See Ames, Cases on Trusts, p. 226, n. 1–2.
[9] Osborne *v.* Gordon, 86 Wis. 92.

complete in itself, and the power may or may not be exercised.[10] The courts will never compel the exercise of this power in the first instance.[11] And they are unanimous in declaring that to the extent to which discretionary power is vested in a trustee they cannot interfere in its reasonable exercise, in the absence of bad faith or fraud.[12] In view, therefore, of the freedom granted to holders of discretionary powers, it seems doubly wise that they should be limited to persons appearing to have been within the contemplation of the creator of the trust.[13]

RECENT CASES.

ADMIRALTY — TORTS — PRIORITY OF MARITIME LIENS. — A tug collided with three vessels, at different times. The owners of each filed libels, but the proceeds of sale were insufficient to satisfy all three decrees. *Held*, that the liens are entitled to priority in inverse order of the collisions. *The America*, 168 Fed. 424 (D. C., N. J.).

American admiralty law regards a vessel as a responsible thing, having capacity to make contracts and commit torts. See *The John G. Stevens*, 170 U. S. 113. A person damaged by her acquires a maritime lien, a proprietary interest, enforceable, regardless of the liability of the owner, by a libel directly against the vessel. *The Barnstable*, 181 U. S. 464. No importance is attached to the time of obtaining the decree. *The J. W. Tucker*, 20 Fed. 129. It is settled that a lien for tort has precedence over a lien for previous supplies. *The John G. Stevens*, *supra*. The doctrine of such cases is that when the vessel continues in navigation, the lienholder necessarily submits his interest to all maritime perils, one of which is the liability of the vessel for torts. *The America*, Fed. Cas. No. 288; *The Frank G. Fowler*, 8 Fed. 331. It has been urged that as the first lien is good against a purchaser without notice, it ought not to be prejudiced by any subsequent interest. *The Frank G. Fowler*, 17 Fed. 653. The basis for the second lien, however, is not a contract, but the absolute liability of the vessel for her wrongs. Hence the holding of the principal case is strictly in accordance with admiralty principles.

ADVERSE POSSESSION — CONSTRUCTIVE POSSESSION — COLOR OF TITLE. — X gave Y a deed for land which covered more than the land which X actually owned. *Held*, that the fact that title to a part of the land actually passed does not prevent the acquisition of constructive possession under the deed. *Roe* v. *Tenn. Ry. Co.*, 50 So. 230 (Ala.). See Notes, p. 56.

AGENCY — AGENT'S LIABILITY TO THIRD PERSONS — PROMISSORY NOTE SIGNED BY AUTHORIZED AGENT. — A promissory note was signed as follows: "J. H. Smethurst's Laundry and Dye Works Limited, — J. H. Smethurst, Managing Director." The words J. H. Smethurst were written by the defendant, and the rest of the signature was impressed by a rubber stamp. *Held*, that the defendant is not personally liable on the note. *Chapman* v. *Smethurst*, 100 L. T. R. 465 (Eng., Ct. App., Mch. 4, 1909).

An agent who puts his name to a note, without making it appear upon the face of the note that it was intended that only the principal should be liable, will be

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[10] Cole *v.* Wade, 16 Ves. 27.
[11] French *v.* Northern Trust Co., 197 Ill. 30.
[12] Hallinan *v.* Hearst, 133 Cal. 645.
[13] See *In re* Rumney & Smith, [1897] 2 Ch. 351.